

FILED

FEB 11 2008

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NOAH MOORE, #24804-013
FCI ELKTON
P.O.BOX 10
LISBON, OHIO 44432

Plaintiff,
-vs-

UNITED STATES OF AMERICA,

Defendant.

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

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Case: 1:08-cv-00223
Assigned To : Sullivan, Emmet G.
Assign. Date : 2/11/2008
Description: FOIA/PRIVACY ACT

COMPLAINT

1. This is a complaint to this Honorable Court about the United States' government's failure to provide the Plaintiff with the documents he requested under Freedom of Information, to wit, the telephone call monitoring log reports from January 2003 to September 2003. These items were requested from the government, explaining that a batch of these telephone logs had already been turned over to Plaintiff during his criminal trial, and that there was nothing in the batch requested that required any exemption from discovery.

JURISDICTION OF THIS COURT

2. This Court has subject matter jurisdiction to review the government's failure to provide the said documents, pursuant to Title 5 U.S.C., §§552 and 552(b), et seq, and 28 U.S.C., §1331. Furthermore, this complaint is brought forth under Haines v. Kerner, 404 U.S. 519(1972).

FACTS OF THE CASE

3. On June 25, 2007, the Department of Justice of the United States Government denied Plaintiff relief stating primarily that release of the requested documents "could reasonably be expected to constitute an unwarranted invasion of the privacy of a third party."

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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

4. On July 18, 2007, Plaintiff's request for reconsideration was also denied.

CAUSE OF ACTION

5. The government's primary reason for denying relief is that it believes that producing the telephone log will constitute an unwarranted invasion of the personal privacy of a third party. However, Plaintiff posits that such concern is inapplicable here because a greater portion of the telephone log for the calls between Plaintiff and the government witness against him(Hillary Williams---the alleged third party) had already been released to this Plaintiff when Hillary Williams took the witness stand against this Plaintiff. As such, there is no need to purport to protect his privacy now.

6. Plaintiff's need for these documents outweighs any imagined privacy interest Mr. Williams allegedly have in this matter, as it was Mr. Williams' testimony that deprived this Plaintiff of his actual (not imagined) liberty in the tune of sixteen years, running consecutively to the nineteen years and seven months he is serving.

7. The government in refusing to produce the requested documents, failed to identify where within the requested tapes that could remotely endanger the personal privacy of the alleged third party.¹

RELIEF SOUGHT

8. Plaintiff requests the defendant to produce the requested documents immediately.

Respectfully Submitted:

Noah Moore
Noah Moore, Pro Se
Plaintiff

¹ In Mays v. Drug Enforcement Administration, 234 F.3d 1324(D.C.Cir. 2000), this Court opined that the government's denial of production of documents was in error because, among other things, the exemption which the government relied upon to deny relief

contd. from p.2, n.1

"...ordinarily permits the government to withhold only the specific information to which it applies, not the entire page of document in which the information appears; any non-exempt information must be segregated and released, See 5 U.S.C., §552(b), unless 'exempt and non-exempt information are intricably intertwined,' such that the excision of exempt information would impose significant costs on the agency and produce an edited document with little informational value." Id., @ 1327, citing Neufeld v. I.R.S., 646 F.3d 661, 666(D.C.Cir. 1981).

In denying Plaintiff's request, the government did not state that exemptable items or portions in the log somehow intertwined with the non-exemptable ones. Nor did the government state that there were names and identities not already known by the parties in Plaintiff's criminal prosecution, that needed blocking out. As such, this Court should issue an order compelling the government to produce the requested documents, or certify under oath and affirmation, perhaps subject to an in camera review by this Court, that the exemptable portions of the logs are intertwined with the non-exemptable portions that excision would be impracticable. See Benneth v. Drug Enforcement Admin., 55 F.Supp. 2d 36(D.D.C. 1999)(approving the holding of names and identities of special agents under FOIA exemption.) Please See Exhibit A-1 through A-6

Dated: 6 day of January, 2008.